In the High Court of Judicature at Madras

Dated: 29/04/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ
and
The Honourable Mrs.Justice R.BANUMATHI

Criminal Appeal No.5 of 1997

Gunasekaran ..Appellant

-Vs-

The State
rep.by Inspector of Police,
Paramakkudi Town Police Station,
Paramakkudi,
Ramanathapuram District. ..Respondent

Criminal Appeal filed under Section 374 of Criminal Procedure Code against the judgment dated 26.04.1996 made in S.C.No.12 of 1995 on the file of Principal Sessions Court, Ramanathapuram.

!For Appellant : Mr.V.Gopinath, Senior Counsel
for Mr.M.Chinnasamy

^For Respondent : Mr.E.Raja,
Additional Public Prosecutor.

:J U D G M E N T

R.BANUMATHI, J.,

Appellant is the Accused in S.C.12/1995 on the file of Principal Sessions Court, Ramnad. By the Judgment dated 26.04.1996, the Principal Sessions Judge has convicted the Appellant / Accused under Sec.302 IPC - for causing the murder of Sundararajan and under Sec.326 IPC - for causing grievous injuries to Krishna Iyer and sentenced him to undergo Imprisonment for Life and Imprisonment of five years respectively. Sentences were ordered to run concurrently.

2. Facts which led to the occurrence could briefly be stated thus:-
P.W.1 - Krishna Iyer was residing in Nagaiah Vaidhiyar Street.
Deceased Sundararajan, P.W.2 Lakshmi and P.W.7 Kuppammal are his son and daughters. Deceased and P.W.1 were doing Sidha Vaidhiyam. They were residing upstairs of the house belonging to one Azagappa Asari. The Accused was

residing downstairs of the same building. The motor and the Switch Board were downstairs. There was frequent quarrel between the family of P.W.1 and the Accused in switching on the motor.

3. While so, on the night of 07.05.1994 at 1.30 AM on 08.05.1994, after witnessing the second show cinema, deceased Sundararajan came to the house and switched on the motor. At that time, the Accused came out and switched off the motor, which resulted in a wordy altercation and also ensued in a scuffle between them. At that time, P.W.1 shouted at the Accused and the Accused went inside the house.

4. On the same day - 08.05.1994 at 5.30 AM, the Accused switched on the motor. At that time, the deceased Sundararajan came down from upstairs and questioned the Accused as to how he could alone switch on the motor, which resulted in wordy quarrel between them. Enraged over the same, the Accused went inside the house and brought M.O.2 knife and inflicted stab injuries on the left Infra Clavicular area, left side Chest and left Hypochondrium. P.W.1 went to the rescue of his son. Angered over his intervention, the Accused inflicted cut injuries on the left abdomen of P.w.1. P.W.2 Lakshmi and P.W.7 Kuppammal, who are the daughters of P.w.1, have witnessed the occurrence. When all of them raised noise, the Accused ran away with the knife. P.W.3 Devendran residing in the same Street also saw the deceased with injuries.

5. Injured Sundararajan was taken to the Government Hospital, Paramakkudi. He was examined by P.W.5 Dr.Meenakshi Sundaram and noted incised wounds in the (i) Left Infra Clavicular area; (ii) Left side of the Chest; and (iii) Left Hypochondrium. He issued Ex.P.3 - Wound Certificate.

6. P.W.6 Dr.Nalini Jayashree examined P.W.1 Krishna Iyer and noted the following cut injuries on the person of P.W.1.

1. A small cut injury on the left epi-gastric region lateral to left kidney. Omentum seen through the wound;
2. A small cut injury on the left abdomen below the left nipple and lateral to the Umbilicus. Omentum seen through the wound;
For better management and treatment, P.W.1 was referred to Madurai Rajaji Government Hospital. X-ray of the abdomen was taken. The cut injuries were found to be grievous in nature. Ex.P-6 is the Wound Certificate.

7. Law was set in motion by recording Ex.P.1 - Complaint from P.W.1 and registration of the case in Crime No.184/1994 under Ss.324 and 3 02 IPC as per Ex.P.18 - First Information Report.

8. Arrest of the Accused: On 08.05.1994 - 5.00 PM the Accused was arrested. His Statement Ex.P-20 was recorded. On the basis of his Statement, a case was registered in Crime No.186/1994 under Ss.341 and 323 IPC under Ex.P.21 - First Information Report. The Accused was interrogated and he had voluntarily given a confession statement, on the basis of which, M.O.2 - knife was seized under Ex.P.10 - Seizure Mahazar. Simultaneous investigation was taken in Crime No.186/1994 along with this case. Witnesses were examined. Expressing the view that the Accused had sustained the injuries due to fall

when he was trying to get into his house after the occurrence and hitting against the Door, the case in Crime No.186/1994 was referred as mistake of fact.

9. P.W.15 Inspector of Police had taken up the investigation. The scene of occurrence - residential house in Nagaiah Vaithiyar Street was inspected in the presence of P.W.10 - Village Administrative Officer and Village Assistant. Ex.P.7 - Observation Mahazar and Ex.P.12 - Rough Plan were prepared on the scene of occurrence. M.Os.5 and 6 were seized under Ex.P.8 - Mahazar. Inquest was held on the body of deceased Sundararajan. Ex.P-13 is the Inquest Report. M.O.1 - Blood stained banian of P.W.1 was seized under Ex.P.11 - Mahazar. Witnesses were examined in connection with the occurrence. Seized material objects were sent for chemical analysis.

10. P.W.16 had taken up the further investigation and examined other witnesses. The Accused was charge sheeted for the offences under Ss.302 and 307 IPC.

11. To substantiate the charges against the Accused, in the trial court, P.Ws.1 to 18 were examined. Exs.P-1 to P-22 were marked. M.Os.1 to 10 were remanded to Court by the Prosecution. The Accused was questioned under Sec.313 Crl.P.C. about the incriminating circumstances and evidence. Denying the Prosecution case, the Accused had stated that during the occurrence, he had also sustained the injuries. According to the Accused, the deceased Sundararajan and his father attempted to assault him and the Accused also sustained injuries and only neighbours came to his rescue. It is the further contention of the Accused that a false case is foisted against him at the instance of one Naganathan, who is the brother-in-law of P.W.1 Krishna Iyer. The case in Crime No.186/1994 was referred as without any basis.

12. Upon consideration of the evidence, the learned Sessions Judge found that by the evidence of injured witness P.W.1 and the eye witnesses P.Ws.2 and 7, the Prosecution has proved that the Accused had caused the fatal injury to the deceased Sundararajan. The trial court found that the evidence adduced by the Prosecution is strengthened by the medical evidence and other proved circumstances. The learned Sessions Judge rejected the defence version that the occurrence would not have taken place in the manner and time putforward by the Prosecution in the context of the stomach contents. Further defence version that deceased Sundararajan was the aggressor was also rejected and the learned Sessions Judge found the Accused guilty under Ss.302 and 326 IPC and convicted him as aforesaid in para (1).

13. The learned Senior counsel for the Appellant / Accused interalia contended that non-examination of independent eye witnesses is fatal to the Prosecution case. The learned Senior Counsel has further raised the following contentions;
(i) the Prosecution has failed to explain the injuries sustained by the Accused and the Prosecution has suppressed the origin and genesis of the occurrence;
(ii) Having come from the upstairs, P.W.1 and deceased Sundararajan

had voluntarily invited the quarrel and are the aggressors.
Submitting that the above aspects were not properly appreciated by the trial court, the learned Senior Counsel assailed the reasonings of conviction. The learned Senior Counsel would further contend that in any event, injuries being inflicted in a sudden fight would only fall under Sec.304(II) IPC and the conviction under Sec.302 IPC is unsustainable.

14. Countering the arguments of the Appellant / Accused, the learned Additional Public Prosecutor submitted that the Accused had the necessary intention, which is clearly manifested by the nature of injuries and the weapon wielded. Laying emphasis upon the nature of injuries, the learned Additional Public Prosecutor submitted that deceased Sundararajan and P.W.1 sustained grievous cut injuries and the trial court has properly appreciated the same and rightly found that the Accused had criminal intention and was rightly convicted under Ss.302 and 326 IPC and that there is no reason warranting interference.

15. Upon consideration of the evidence and materials on record, submissions of both sides and judgment of the trial court, in our considered view, the following points arise for consideration in this Appeal.
(1) Whether the Prosecution has proved the guilt of the Accused beyond reasonable doubt ?

(2) Whether conviction of the Appellant / Accused under Sec.302 IPC is sustainable ? or whether the same is to be altered into Sec.304(II) IPC ?

16. Almost the facts leading to the occurrence are not much in dispute. Admittedly the family of P.W.1 was residing upstairs in the house belonging to one Azagappa Asari and that the Accused was residing downstairs of the same house. The motor and the switch board was in the portion of the Accused. There was frequent quarrels between the family of P.W.1 and the Accused in switching on the motor and operating the same.

17. On the fateful day in the wee hours of 08.05.1994 - 1.30 AM, after witnessing the second show cinema, deceased Sundararajan had switched on the motor which was objected by the Accused, which resulted in wordy altercation between them at that odd time. When P.W.1 - father of deceased Sundararajan shouted at the Accused, the Accused went inside the house. On the small hours of the same day - i.e.08.05.1994 - 5.30 AM, the Accused switched on the motor. At that time, the deceased Sundararajan came down from the upstairs and questioned the Accused as to how he could switch on the motor at the early morning, which resulted in wordy quarrel between them. Enraged over the same, the Accused went inside the house and brought M.O.2 knife from inside his house and inflicted injuries on deceased Sundararajan. The Accused also inflicted cut injuries on the left abdomen of P.W.1, who went to the rescue of his son. P.W.1 - injured witness, P.Ws.2 and 7 - sisters of deceased Sundararajan have consistently spoken about the occurrence. Their evidence about the origin of the offence and that the Accused going inside the house and bringing M.O.2 knife and inflicting cut injuries on deceased Sundararajan and P.W.1 is cogent and consistent.

18. Defence version is that during the course of the same transaction, the Accused also had sustained injuries on his head, left side chest, right shoulder, etc. According to the Accused, further attack on the Accused was prevented by his wife and one Baskaran. Ex.P.1 - Complaint does not state anything about the injuries sustained by the Accused. In their evidence also, P.Ws.1, 2 and 7 did not speak about the injuries on the person of the Accused. Credibility of P.Ws.1, 2 and 7 and Prosecution case is assailed on ground that the nonexplanation of the injuries on the person of the Accused would fatally affect the Prosecution case.

19. By perusal of Ex.D.2 - Wound Certificate of the Accused, we find that the Accused sustained the following injuries;
(1) A linear abrasion on the left side of head frontal area;
(2) Multiple scratches on the left side of the chest just below left clavicle;
(3) Small abrasion on the left anterior aspect of shoulder;
(4) A small cut injury on the lateral aspect of index finger. Blood clot present on the lower end of index finger;
(5) An abrasion on the anterior aspect of left shoulder just above the scapula.
The Accused was treated as out-patient.

20. After the Accused was arrested on 08.05.1994 - 5.00 PM, Statement of the Accused (Ex.P-20) was recorded. On the basis of his Statement, case was registered in Crime No.186/1994 under Ss.341 and 323 IPC under Ex.P.21 - First information Report. From the evidence of P.W.15 - Inspector of Police, we find that the case in Crime No.186/1994 was taken up for simultaneous investigation along with this case in Crime No.184/1994. In both cases, witnesses were examined. Case in Crime No.186/1994 was referred as "mistake of fact" as per Ex.P.22 - Referred Charge Sheet. For referring the case, P.W.15 - Investigating Officer expressed his views in Ex.P.22 as ;-

(VERNACULAR OMITTED)

This, in our view, sufficiently explains the injuries on the person of the Accused.

21. According to the Accused, the deceased Sundararajan and P.W.1 had caused him the injuries with 'tpwF fk;g['. When P.W.1 Krishna Iyer was questioned, he has admitted having been armed with 'tpwF fk;g[' at the time of occurrence, but denied having attacked the Accused. We are of the view that mere non-explanation of injuries on the person of the Accused would not ipso facto lead to the conclusion that the Prosecution has not come forward giving the true version and genesis of the case. Prosecution case cannot be thrown overboard simply because the Prosecution witnesses did not explain the injuries on the person of the Accused.

22. Prosecution is obliged to explain the injuries sustained by the Accused;-

(i) only if it is not superficial or trivial in nature;

(ii) it has occurred in the course of same incident and the origin and the genesis of the case is clear from the evidence on record;

As noted above, from Ex.D-2 we find that the Accused had sustained only simple injuries. We are of the view that the explanation of injuries on the person of the Accused on the part of the Prosecution is sufficient.

23. There may be cases, where the evidence of the Prosecution is so strong, clear and cogent inspiring the confidence of the court and the non-explanation of injuries on the person of the Accused may not affect the Prosecution case. As discussed earlier, in the instant case, Prosecution case is based upon the strong evidence of P.W.1, who is an injured witness. When P.W.1 tried to rescue his son, the Accused inflicted stab injuries on the left abdomen of P.W.1. From Ex.P-6, we find P.W.1 sustained,

1. a small cut injury on the left epi-gastric region lateral to left kidney. Omentum seen through the wound;
2. a small cut injury on the left abdomen below the left nipple and lateral to the Umbilicus. Omentum seen through the wound;
X-ray of the abdomen was taken by P.W.4 who noted
Air under Diaphragm.
P.W.6 opined that both the above injuries are grievous in nature.

24. That P.W.1 being injured witness, his evidence lends assurance to the Prosecution case and the same is entitled to great weight. Unless there are cogent and convincing grounds, evidence of injured witness P.W.1 cannot be discarded. Evidence of P.W.1 as to the occurrence and the Accused causing cut injuries to the deceased stands on higher footing. Likewise, P.Ws.2 and 7 - sisters of the deceased are natural witnesses, who speak about the occurrence. Thus the case of the Prosecution is based on the strong evidence of injured witness P.W.1 and natural eye witnesses - P.Ws.2 and 7. The fact that they have not properly explained the injuries on the person of the Accused would not affect the Prosecution case nor the veracity of the witnesses.

25. We find that the evidence of P.Ws.1, 2 and 7 on the occurrence is cogent and consistent. In one voice consistently they have spoken about the cut injuries inflicted on the deceased on the Left Infra Clavicular area, Left Side Chest, Left Hypochondrium. Their evidence remains unshaken. In spite of lengthy cross examination, nothing substantial has been elicited undermining their version.

26. The objective finding during investigation also strengthens the Prosecution case. Blood was found splattered where the sand was heaped in the scene of occurrence. Recovery of M.O.2 Knife at the instance of the Accused is a strong circumstance against the Accused. Presence of human blood in M.O.2-knife, M.O.5-blood stained sand and M. O.1 banian - the blood stained cloth of P.W.1 would further strengthen the Prosecution case. To eschew from prolixity we refrain from elaborating upon other details which clearly strengthen the prosecution case. Suffice it to point out that by the evidence of injured witness P.W.1 and eye witnesses P.Ws.2 and 7, Prosecution has satisfactorily established that the Accused inflicted fatal injuries on the

deceased Sundararajan and caused grievous injuries to P.W.1 Krishna Iyer thus bringing home the guilt of the accused.

27. Nature of offence: From Ex.P.5 - Post Mortem Certificate of deceased Sundararajan, it is seen that he sustained the following external injuries and corresponding internal injuries;

External injuries:
(1) An incised wound in the Left Infra Clavicular area;
(2) An incised wound in the Left Side of the Chest near the Left Sternal Region on the 5th Left Intercostal Space;
(3) An incised wound in the Left Hypochondrium;
Internal injuries:
(1) An incised wound on the right Heart;
(2) Lung: Lung punctured by an incised wound at the level of 3rd Intercostal Space;
(3) Stomach: An incised wound on the Stomach.

P.W.6 opined that the death was due to shock and haemorrhage due to injuries to the vital organs like Heart, Lung and Stomach. Thus deep incised wounds were caused to Sundararajan with M.O.2 Knife. M.O.2 Knife is of the length of 19 cm. Iron blade portion measuring 9 cm with wooden handle measuring 10 cm. From the nature of injuries sustained and the weapon used, the trial court inferred the criminal intention and convicted the Appellant / Accused under

Sec.302 IPC. In the facts and circumstances of the case, whether the conviction under Sec.302 IPC is sustainable is a short point arising for our consideration.

28. The occurrence on the morning of 08.05.1994 is sequel to the occurrence on the night of 07.05.1994. Wife of the Accused being pregnant, the Accused wanted to maintain calmness and prevent others from causing interference during her sleep. In that context, there was exchange of abusive words on the early morning of 08.05.1994. There was no pre-plan or design. Had Sundararajan not come down from the upstairs, there would not have been occurrence. In the quarrel between the family of P.W.1 and the Accused, the Accused suddenly got enraged and in the heat of passion, wielded M.O.2 knife. From the shape and the size of M.O.2, we could perceive that it must be a kitchen knife. From the nature of injuries, we find that the weapon was wielded forcibly. There can be no doubt that the weapon was used with considerable amount of force. But that by itself is not sufficient to raise the presumption that the Appellant intended to cause the death of deceased Sundararajan.

29. Submitting that the nature of injuries are not decisive factors and that notwithstanding the number of wounds, the Accused would be entitled to the benefit of "Exception IV" to Sec.300 IPC, the learned Senior Counsel relied upon SURINDER KUMAR ..vs.. UNION TERRITORY, CHANDIGARH (1989 L.W.(Crl.) 407), wherein the Supreme Court has altered the conviction from Sec.302 IPC to Sec.304(I) IPC. We may usefully refer to the following observation of the Supreme Court;

To invoke the Exception 4 to S.300 IPC., four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner.

30. The same principle is reiterated in SUKHDEV SINGH..vs..DELHI STATE (GOVT.OF NCT OF DELHI) (2003 SCC (Crl.) 1714), where in the course of a sudden quarrel, the Accused fired a shot which hit P.W.7, injuring him and another shot killing the deceased. Notwithstanding use of pistol, the Supreme Court changed the conviction to 304 Part II IPC. Identical facts are before us in the instant case. Considering the facts and circumstances as presented by the Prosecution and that the injuries were inflicted on deceased Sundararajan and P.W.1 Krishna Iyer, in our considered view, the conviction is to be altered into one under Sec.304(II) IPC instead of Sec.300 IPC.

31. For causing injuries to P.W.1, the Appellant / Accused was convicted under Sec.326 IPC and sentenced to undergo Rigorous Imprisonment for five years. Considering the circumstances of the case, we are of the view, imposing sentence of five years for the offence under Sec.304 Part II IPC would meet the ends of justice.

32. We, therefore, partly allow this Appeal. Conviction of the Appellant / Accused in S.C.12/1995 (Principal Sessions Court, Ramanathapuram) (dated 26.04.1998) under Sec.302 IPC is altered into one under Sec.304(II) IPC. For the conviction under Sec.304(II) IPC, the Appellant / Accused is sentenced to undergo Rigorous Imprisonment for a period of five years. Conviction and sentence of Imprisonment under Sec.326 IPC is confirmed. The sentences of Imprisonment are ordered to run concurrently.

33. The trial court is directed to take immediate steps for securing the Accused to commit him to prison for serving the remaining period of sentence.

Index:Yes.
Internet : Yes.

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To

1. The Principal Sessions Judge,
Ramanathapuram.

2. The Collector,
Ramanathapuram District,
Ramanathapuram.

3. The Superintendent,
Central Prison,
Madurai.

4. The Inspector of Police,
Paramakkudi Town Police Station.

5. The Public Prosecutor,
High Court, Madras.